

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U 902-E) for a Certificate Of Public Convenience & Necessity Valley-Rainbow 500kV Inter-Connect Project.

Application 01-03-036
(Filed March 23, 2001)

DECISION GRANTING PETITION TO MODIFY IN PART

On January 23, 2003, San Diego Gas & Electric Company (SDG&E) filed a petition to modify Decision (D.) 02-12-066, which denied without prejudice SDG&E's request for a certificate of public convenience and necessity for a 500 kilovolt transmission project known as Valley-Rainbow. D.02-12-066 found that based on the evidence, SDG&E would not experience a capacity deficiency within the adopted five-year planning horizon for the project. Based on the record, the Commission concluded that SDG&E should have sufficient capacity to reliably meet its needs through at least 2008 or 2009. (*See* D.02-12-066, p.57.)

In its petition, SDG&E asks the Commission to reverse its conclusion in D.02-12-066 regarding the need for a project within the five year planning horizon based on "new evidence" it presents. SDG&E seeks to have the Commission rely on SDG&E's interpretation of that "evidence" without the opportunity for cross-examination or the ability of other parties to present evidence that might contradict SDG&E's interpretation. In other words, SDG&E seeks to have the Commission reopen the record to accept SDG&E's newly

proffered evidence without providing equal opportunity for other parties to do the same. In this case, the Commission did provide that if SDG&E identified a reliability or economic need for a similar transmission project in the future, it should file a new application. (*See* D.02-12-066, p.70.)

We did not foreclose, however, SDG&E's rights under our Rules of Practice and Procedure to file a petition for modification. Based on the freshness of that petition and the substantive, yet untested, new information, it is reasonable to grant SDG&E's petition, in part. We do not accept SDG&E's new information as presented in its petition on its face. Parties should have the opportunity to cross-examine SDG&E's witnesses and to present their own testimony. We need to serve due process in an expeditious manner. Accordingly, we will direct the Chief Administrative Law Judge to reopen this proceeding quickly to allow for another round of testimony and further evidentiary hearings.

One the proceeding is reopened, we will again have a discretionary, albeit limited, decision to make with respect to SDG&E's application for the Valley Rainbow Project. Accordingly, we will reverse the direction we gave to the Energy Division in D.02-12-066 to halt its preparation of the DEIR/DEIS for the Valley-Rainbow Project. In an October 21, 2002 ALJ Ruling, the Energy Division was directed to prepare an interim report that provided a preliminary alternatives feasibility analysis to the proposed Valley Rainbow Project including the status of the analysis and constraints identified to date. The interim report was filed and served on all parties on November 21, 2002. As an initial step, we direct Energy Division to finish its Screening Report. This will provide a final basis and rationale for identified viable alternatives that could be considered in CEQA and/or NEPA document pending the outcome of this petition for modification.

Comments on Alternate Draft Decision

The alternate draft decision of Commissioner Peevey in this matter was mailed to the parties in accordance with Rule 77.6 of the Rules of Practice and Procedure. Comments were filed and served by Greenpeace, Community Intervenors, Office of Ratepayer Advocates, Centex Homes, and San Diego Gas & Electric Company. Reply comments were filed and served by SDG&E, California ISO and ORA. Since there was an ambiguity in the transmittal letter of the Draft Alternate Decision on when the comments and replies were due, we note that comments served no later than May 29, 2003 and replies served no later than June 3, 2003 are accepted.

Commentors raise no legal or technical issues with the Draft Alternate Decision. The Commission is making a discretionary act pursuant to its Rules of Practice and Procedure on SDG&E's Petition for Modification. No issues are prejudged by reopening the proceeding for further hearings.

Assignment of Proceeding

Susan Kennedy is the Assigned Commissioner and Michelle Cooke is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.02-12-066, the Commission directed SDG&E to file a new application if new information indicated the need for a project.
2. SDG&E seeks to introduce new evidence into the record without it being tested by cross-examination or the opportunity for other parties to present evidence.

Conclusions of Law

1. Evaluation of new information requires reopening the record and holding additional evidentiary hearings.
2. A.01-03-036 should be reopened.

3. Parties should have the opportunity to cross-examine SDG&E's new information.
4. The petition to modify should be granted in part as described herein.

O R D E R

Therefore, **IT IS ORDERED** that San Diego Gas & Electric Company's petition for modification is granted in part to reopen the record to take additional testimony and hold evidentiary hearings.

This order is effective today.

Dated _____, at San Francisco, California.